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SENATE BILL 1239

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MICHAEL S. SANCHEZ

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO MEDICAL MALPRACTICE; CHANGING PROCEDURES FOR CERTAIN  
MALPRACTICE CLAIMS; AMENDING SECTIONS OF THE MEDICAL MALPRACTICE  
ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 41-5-14 NMSA 1978 (being Laws 1976,  
Chapter 2, Section 14) is amended to read:

"41-5-14. MEDICAL REVIEW COMMISSION. --

A. The "New Mexico medical review commission" is  
created. The function of the New Mexico medical review  
commission is to provide panels to review all malpractice claims  
against health care providers covered by the Medical Malpractice  
Act.

B. Those eligible to sit on a panel shall consist of  
health care providers licensed pursuant to New Mexico law and

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1 residing in New Mexico and ~~[the]~~ members of the state bar.

2 C. Cases ~~[which]~~ that a panel will consider include  
3 all cases involving any alleged act of malpractice occurring in  
4 New Mexico by health care providers qualified under the Medical  
5 Malpractice Act.

6 D. An attorney shall submit a case for the  
7 consideration of a panel, prior to filing a complaint in any  
8 district court ~~[or other court sitting in New Mexico]~~ magistrate  
9 court or metropolitan court, by addressing an application, in  
10 writing, signed by the patient or his attorney, to the director  
11 of the New Mexico medical review commission. Notwithstanding  
12 the other provisions of this subsection, when a malpractice  
13 claim alleges damages of five thousand dollars (\$5,000) or less,  
14 the patient making the malpractice claim is not required to  
15 submit the case for consideration by the New Mexico medical  
16 review commission prior to filing a complaint in district court,  
17 magistrate court or metropolitan court.

18 E. The director of the New Mexico medical review  
19 commission ~~[will]~~ shall be an attorney appointed by and serving  
20 at the pleasure of the chief justice of the New Mexico supreme  
21 court.

22 F. The chief justice shall set the director's salary  
23 and report the ~~[same]~~ salary to the superintendent in his  
24 capacity as custodian of the patient's compensation fund."

25 Section 2. Section 41-5-15 NMSA 1978 (being Laws 1976,

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1 Chapter 2, Section 15) is amended to read:

2 "41-5-15. COMMISSION DECISION REQUIRED--APPLICATION.--

3 A. No malpractice action may be filed in any court  
4 against a qualifying health care provider before application is  
5 made to the New Mexico medical review commission and its  
6 decision is rendered. Notwithstanding the other provisions of  
7 this subsection, when a malpractice claim alleges damages of  
8 five thousand dollars (\$5,000) or less, the patient making the  
9 malpractice claim is not required to submit the case for  
10 consideration by the New Mexico medical review commission prior  
11 to filing a complaint in district court, magistrate court or  
12 metropolitan court.

13 B. This application shall contain the following:

14 (1) a brief statement of the facts of the case,  
15 naming the persons involved, the dates and the circumstances, so  
16 far as they are known, of the alleged act [~~or acts~~] of  
17 malpractice; and

18 (2) a statement authorizing the panel to obtain  
19 access to all medical and hospital records and information  
20 pertaining to the matter giving rise to the application and, for  
21 the purposes of its consideration of the matter only, waiving  
22 any claim of privilege as to the contents of those records.  
23 Nothing in that statement shall in any way be construed as  
24 waiving that privilege for any other purpose or in any other  
25 context, in or out of court. "

. 113186.3

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1           Section 3. Section 41-5-19 NMSA 1978 (being Laws 1976,  
2 Chapter 2, Section 19) is amended to read:

3           "41-5-19. HEARING PROCEDURES. --

4           A. At the time set for hearing, the attorney  
5 submitting the case for review shall be present and shall make a  
6 brief introduction of his case, including a resume of the facts  
7 constituting alleged professional malpractice [~~which~~] that he is  
8 prepared to prove. The health care provider against whom the  
9 malpractice claim is brought and its attorney may be present and  
10 may make an introductory statement of its case. The patient  
11 alleging the malpractice claim may be present during the hearing  
12 before the panel.

13           B. Both parties may call witnesses to testify before  
14 the panel, which witnesses shall be sworn. Medical texts,  
15 journals, studies and other documentary evidence relied upon by  
16 either party may be offered and admitted if relevant. Written  
17 statements of fact of treating health care providers may be  
18 reviewed. The monetary damages in any case shall not be a  
19 subject of inquiry or discussion.

20           C. The hearing [~~will~~] shall be informal, and no  
21 official transcript shall be made. Nothing contained in this  
22 [~~paragraph~~] subsection shall preclude the taking of the  
23 testimony by the parties at their own expense.

24           D. At the conclusion of the hearing, the panel may  
25 take the case under advisement or it may request that additional

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1 facts, records, witnesses or other information be obtained and  
2 presented to it at a supplemental hearing, which shall be set  
3 for a date and time certain, not longer than thirty days from  
4 the date of the original hearing unless the attorney bringing  
5 the matter for review [~~shall~~] consents in writing [~~consent~~] to a  
6 longer period.

7 E. Any supplemental hearing shall be held in the  
8 same manner as the original hearing, and the parties concerned  
9 and their attorneys may be present. "

10 Section 4. EFFECTIVE DATE. -- The effective date of the  
11 provisions of this act is July 1, 1997.